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## BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AUG 04 2014

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DOCKET NO. T-01051B-05-0495  
 DOCKET NO. T-03693A-05-0495

PAC-WEST TELECOMM, INC.

Complainant,

vs.

QWEST CORPORATION,

Respondent.

ORIGINAL

PROCEDURAL ORDER**BY THE COMMISSION:**

On July 13, 2005, Pac-West Telecomm, Inc. ("Pac-West") filed a formal complaint with the Arizona Corporation Commission ("Commission") against Qwest Corporation ("Qwest" now known as "Qwest Corporation dba CenturyLink") seeking to enforce an Interconnection Agreement between the parties. The dispute was whether Qwest was required to pay reciprocal compensation to Pac-West for terminating Internet Service Provider ("ISP") traffic, including VNXX traffic.<sup>1</sup> Qwest made counterclaims, alleging that use of VNXX was not permitted and that the traffic in question was not subject to the FCC's compensation rate for ISP-bound traffic. In Decision No. 68820 (June 29, 2006) the Commission found that Qwest must compensate Pac-West for ISP traffic regardless of whether it physically originated and terminated in the same local calling area. Qwest appealed the Decision to the federal district court.

In March 2008, the United States District Court of Arizona remanded the matter back to the Commission to determine whether VNXX traffic was local traffic subject to reciprocal compensation, interexchange traffic subject to access charges, or traffic subject to some other form of intercarrier compensation. In the remanded proceeding at the Commission, the parties filed pre-hearing briefs and

<sup>1</sup> VNXX traffic does not physically originate and terminate in the same local calling area, but based on the phone number assigned, appears to do so from the perspective of the calling party.

1 supplemental authorities on outstanding issues; the schedule was suspended so that parties could  
2 pursue settlement discussions, which proved unsuccessful; and ultimately oral argument was held on  
3 June 12, 1012, and the matter taken under advisement.

4 On April 4, 2013, Pac-West filed a Notice of Bankruptcy indicating that Pac-West filed for  
5 relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court,  
6 Western District of Texas, Austin Division, Case Number 13-10573-hem. Pac-West expressed the  
7 belief that the bankruptcy filing stayed further proceedings in this docket pursuant to 11 U.S.C. §  
8 362, until further order of the Bankruptcy Court.

9 By Procedural Order dated April 23, 2013, the parties were asked to file comments on  
10 whether the Pac-West bankruptcy filing prevented the Hearing Division from issuing a  
11 Recommended Opinion and Order ("ROO") in this complaint matter and/or the Commission from  
12 taking action on that ROO.

13 On May 10, 2013, the Commission's Utilities Division ("Staff") and Qwest filed Comments;  
14 and on May 13, 2013, Pac-West filed its Comments.

15 By Procedural Order dated July 10, 2013, it was determined that based on the underlying  
16 procedural history and legal authorities cited by the parties, the automatic stay provisions of the  
17 Bankruptcy Code did not prevent the Commission from determining the proper classification of  
18 VNXX traffic, but would stay the Commission from taking action to determine Qwest's  
19 counterclaims against Pac-West. Thus, for practical reasons, the docket was held in abeyance  
20 pending a written request by either party to issue a Decision or otherwise recommence proceedings.  
21 Pac-West was ordered to file quarterly status reports.

22 On September 24, 2013, local counsel for Pac-West filed a Request to Withdraw as Counsel.  
23 In this filing, counsel stated that it was his belief that TNCI Operating Company LLC was going to  
24 purchase Pac-West out of bankruptcy, with the acquisition expected to close the week of September  
25 9, 2013. Counsel reported that neither Pac-West nor its counsel responded to his e-mails, and that he  
26 was not retained as counsel by TNCI Operating Company. Counsel stated further that he provided  
27 notice to Pac-West that he was withdrawing as Pac-West's counsel.

28 Since the request to withdraw, there have been no status reports filed, nor filings of any kind

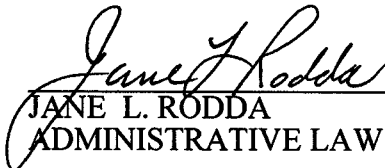
1 made in this docket. Neither Pac-West, nor its successor (if there is one), filed a notice of substitution  
2 of counsel. It is unclear how Qwest's claim against Pac-West was impacted by Pac-West's  
3 bankruptcy, or how, or if, Pac-West or its successor, will comply with Rules 31 and 38 of the Rules  
4 of the Arizona Supreme Court and A.R.S. §40-243 concerning representation before the Commission.

5 Given the multitude of uncertainties surrounding Pac-West and the various issues raised in  
6 this proceeding, the parties and Staff are requested to update the Commission on the status of this  
7 matter and provide recommendations for further Commission action in this docket.

8 IT IS THEREFORE ORDERED that **Pac-West (or its successor), Qwest, and Staff** shall file  
9 status reports and procedural recommendations, as discussed above, by **September 30, 2014**.

10 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend or waive  
11 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

12 Dated this 4<sup>th</sup> day of August, 2014

13  
14   
15 JANE L. RODDA  
ADMINISTRATIVE LAW JUDGE

16 Copies of the foregoing mailed/delivered  
this 4<sup>th</sup> day of August, 2014 to:

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By   
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Secretary to Jane L. Rodda